

ANDREW C. SAYLES  
CONNELL FOLEY LLP  
85 Livingston Avenue  
Roseland, New Jersey 07068  
Phone: (973) 535-0500  
Facsimile: (973) 535-9217  
Email: asayles@connellfoley.com  
Attorneys for Defendants

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

SANDRA BAKER, on behalf of Plaintiff and a  
class,

Plaintiff,

v.

COHEN & SLAMOWITZ, LLP, DAVID A.  
COHEN and MITCHELL G. SLAMOWITZ,

Defendants.

Civil Action No. 6:13-cv-1319 (FJS/ATB)

**DECLARATION OF ANDREW C.  
SAYLES, ESQ.**

ANDREW C. SAYLES, ESQ., hereby affirms that the following statements are true and correct to the best of his knowledge, information and belief:

1. I am an attorney licensed to practice law in the State of New York and am admitted to practice in United States District Court for the Northern District of New York.
2. I am a partner with the law firm of Connell Foley LLP, attorneys for Defendants Cohen & Slamowitz, LLP (“C&S”), David A. Cohen, Esq., and Mitchell G. Slamowitz, Esq., (collectively “Defendants”) in the above entitled action.
3. I submit this Declaration in furtherance of Defendants’ opposition to Plaintiff’s Motion for Class Certification.

4. Here, Plaintiff defaulted on a credit card account opened through Target National Bank. On April 16, 2013, C&S filed suit against Plaintiff in the City Court for Sherrill, New York, on behalf of TD Bank USA, N.A., As Successor in Interest to Target National Bank (“Target”) seeking in excess of \$4,000 on the defaulted credit card debt (“Collection Suit”). True true and accurate copies of the Complaint served and filed in Collection Suit are attached hereto as **Exhibit A**. The attachments are identical, except that the filed copy is not as legible as the served copy.

5. On or about June 16, 2013, Plaintiff, through counsel, served an Answer to the Collection Suit. A true and accurate copy of Plaintiff’s Answer to the Collection Suit is attached hereto as **Exhibit B**.

6. Plaintiff subsequently settled the Collection Suit with C&S and a Settlement Agreement and Stipulation was filed on September 3, 2013. A true and accurate copy of this Settlement Agreement and Stipulation is attached hereto as Exhibit C.

7. The parties in this Action have exchanged written discovery demands and have responded to the same. Fact discovery remains open and Defendants intend to conduct supplemental fact discovery, including but not limited to party and fact witness depositions.

Dated: June 13, 2014

/s/ Andrew C. Sayles

**ANDREW C. SAYLES**  
**CONNELL FOLEY LLP**  
85 Livingston Avenue  
Roseland, New Jersey 07068  
Phone: (973) 535-0500  
Facsimile: (973) 535-9217  
Email: asayles@connellfoley.com  
Attorneys for Defendants

# EXHIBIT A

CITY COURT OF CITY OF SHERRILL  
COUNTY OF ONEIDA, STATE OF NEW YORK

TD BANK USA, N.A., AS SUCCESSOR IN INTEREST TO  
TARGET NATIONAL BANK

PLAINTIFF,

-AGAINST-

SANDRA A BAKER

DEFENDANT(S).

TO THE ABOVE NAMED DEFENDANT(S):

CONSUMER CREDIT TRANSACTION

INDEX NUMBER: C-5407-13  
C&S FILE NO. F009145

4/16/13

## SUMMONS

PLAINTIFF'S ADDRESS:  
3701 WAYZATA BLVD  
MINNEAPOLIS, MN 55416

YOU ARE HEREBY SUMMONED AND REQUIRED TO APPEAR IN THE CITY COURT OF THE CITY OF SHERRILL, LOCATED AT 373 SHERRILL RD, SHERRILL, NY 13461, IN SAID CITY, COUNTY OF ONEIDA, STATE OF NEW YORK, BY SERVING AN ANSWER\* TO THE ANNEXED COMPLAINT UPON PLAINTIFF'S ATTORNEY, AT THE ADDRESS STATED BELOW, OR IF THERE IS NO ATTORNEY, UPON THE PLAINTIFF AT THE ADDRESS STATED ABOVE, WITHIN THE TIME PROVIDED BY LAW AS NOTED BELOW;

UPON YOUR FAILURE TO SO ANSWER, JUDGMENT WILL BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT, TOGETHER WITH COSTS OF THIS ACTION.

DATED: April 2, 2013

**COHEN & SLAMOWITZ, LLP**

ATTORNEYS FOR PLAINTIFF

P.O. BOX 9004, 199 CROSSWAYS PARK DR., WOODBURY, NY 11797-9004

(516) 686-8992; (800) 293-6006 ext. 8992; Refer to C&S File No. F009145

NOTE: THE LAW PROVIDES THAT:

A) IF THIS SUMMONS IS SERVED BY ITS DELIVERY TO YOU PERSONALLY WITHIN THE COUNTY OF ONEIDA, YOU MUST ANSWER WITHIN TEN (10) DAYS AFTER SUCH SERVICE; OR

B) IF THIS SUMMONS IS SERVED BY DELIVERY TO ANY PERSON OTHER THAN YOU PERSONALLY OR IS SERVED OUTSIDE THE COUNTY OF ONEIDA, OR BY PUBLICATION, OR BY ANY MEANS OTHER THAN PERSONAL DELIVERY TO YOU WITHIN THE COUNTY OF ONEIDA, YOU ARE ALLOWED THIRTY (30) DAYS AFTER SERVICE IS COMPLETE WITHIN WHICH TO ANSWER.

\* YOU NEED NOT PHYSICALLY GO TO THE COURT TO SERVE AN ANSWER

DEFENDANT'S TO BE SERVED:

SANDRA A BAKER, 9368 HARRIS RD, LEE CENTER NY 13363-2208

THIS COMMUNICATION IS FROM A DEBT COLLECTOR AND IS AN ATTEMPT TO COLLECT A DEBT.  
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.



ID3752080

C&S00055

CITY COURT OF CITY OF SHERRILL  
COUNTY OF ONEIDA, STATE OF NEW YORK

-----X  
TD BANK USA, N.A., AS SUCCESSOR IN INTEREST  
TO TARGET NATIONAL BANK

PLAINTIFF,

INDEX NUMBER  
FILE NO. F009145

-AGAINST-

**COMPLAINT**

SANDRA A BAKER

DEFENDANT(S).

-----X  
PLAINTIFF, BY ITS ATTORNEYS, COMPLAINING OF THE DEFENDANT(S), RESPECTFULLY  
ALLEGES THAT:

1. PLAINTIFF IS A NATIONAL BANKING ASSOCIATION ORGANIZED PURSUANT TO  
FEDERAL LAW.
2. UPON INFORMATION AND BELIEF, THE DEFENDANT(S) RESIDES OR HAS AN OFFICE  
IN THE COUNTY IN WHICH THIS ACTION IS BROUGHT, OR THE DEFENDANT(S) TRANSACTED  
BUSINESS WITHIN THE COUNTY IN WHICH THIS ACTION IS BROUGHT, EITHER IN PERSON OR  
THROUGH AN AGENT AND THE INSTANT CAUSE OF ACTION AROSE OUT OF SAID TRANSACTION.  
**AS AND FOR A FIRST CAUSE OF ACTION**

1. PLAINTIFF REPEATS AND REALLEGES EACH AND EVERY ALLEGATION CONTAINED  
IN THE FOREGOING PARAGRAPHS AS IF MORE FULLY SET FORTH HEREIN.

2. PLAINTIFF'S PREDECESSOR IN INTEREST, TARGET NATIONAL BANK  
(HEREINAFTER "ORIGINAL CREDITOR"), OFFERED TO OPEN A CREDIT CARD ACCOUNT, ACCOUNT  
NO. XXXX-XXXX-XXXX-3609 (HEREINAFTER THE "ACCOUNT"), IN DEFENDANT'S NAME.

3. DEFENDANT ACCEPTED THE OFFER BY USING THE ACCOUNT.

4. DEFENDANT DEFAULTED BY FAILING TO REPAY THE BALANCE DUE UNDER THE  
ACCOUNT. DEMAND FOR PAYMENT WAS MADE, BUT DEFENDANT FAILED TO REPAY THE  
BALANCE OWED.

5. THE ORIGINAL CREDITOR SOLD THE ACCOUNT, INCLUDING ALL RIGHT, TITLE AND  
INTEREST IN AND TO THE OUTSTANDING BALANCE OWED BY DEFENDANT. PLAINTIFF  
PURCHASED THE ACCOUNT PRIOR TO SEPTEMBER 1, 2009 AND IS NOW THE OWNER AND  
ASSIGNEE OF THE ACCOUNT.

6. DEFENDANT(S) NOW OWE A BALANCE OF \$4,841.00 AS OF February 14, 2011, NO  
PART OF WHICH HAS BEEN PAID DESPITE DUE DEMAND THEREFOR.

WHEREFORE, PLAINTIFF DEMANDS JUDGMENT AGAINST DEFENDANT(S) IN THE SUM OF \$4,841.00 TOGETHER WITH FEES, COSTS AND DISBURSEMENTS.

THE UNDERSIGNED ATTORNEY HEREBY CERTIFIES THAT, TO THE BEST OF HIS/HER KNOWLEDGE, INFORMATION AND BELIEF, FORMED AFTER AN INQUIRY REASONABLE UNDER THE CIRCUMSTANCES, THE PRESENTATION OF THE WITHIN COMPLAINT AND THE CONTENTIONS THEREIN ARE NOT FRIVOLOUS AS DEFINED IN PART 130-1.1(c) OF THE RULES OF THE CHIEF ADMINISTRATOR.

DATED: APRIL 2, 2013

YOURS, ETC.  
COHEN & SLAMOWITZ, LLP

BY: S/  
D. Cohen/M. Slamowitz/C. Van Houten ESQS.  
ATTORNEYS FOR PLAINTIFF  
P.O. BOX 9004, 199 CROSSWAYS PARK DRIVE, WOODBURY,  
NY 11797-9004  
(516) 686-8992; (800) 293-6006 ext. 8992;  
Refer to C&S File No. F009145

CITY COURT OF CITY OF SHERRILL  
COUNTY OF ONEIDA, STATE OF NEW YORK

-----X  
TD BANK USA, N.A. AS SUCCESSOR IN INTEREST TO  
TARGET NATIONAL BANK

PLAINTIFF,

-AGAINST-

SANDRA A BAKER

DEFENDANT(S)

-----X  
TO THE ABOVE NAMED DEFENDANT(S)

CONSUMER CREDIT TRANSACTION

INDEX NUMBER:

C&S FILE NO F009145

FILED  
2013 APR 16 PM 2:14  
C-5407-13

## SUMMONS

PLAINTIFF'S ADDRESS

3701 WAYZATA BLVD  
MINNEAPOLIS, MN 55416

**YOU ARE HEREBY SUMMONED** AND REQUIRED TO APPEAR IN THE CITY COURT OF THE CITY OF SHERRILL, LOCATED AT 373 SHERRILL RD SHERRILL, NY 13461. IN SAID CITY, COUNTY OF ONEIDA, STATE OF NEW YORK. BY SERVING AN ANSWER\* TO THE ANNEXED COMPLAINT UPON PLAINTIFF'S ATTORNEY, AT THE ADDRESS STATED BELOW OR IF THERE IS NO ATTORNEY, UPON THE PLAINTIFF AT THE ADDRESS STATED ABOVE, WITHIN THE TIME PROVIDED BY LAW AS NOTED BELOW.

UPON YOUR FAILURE TO SO ANSWER JUDGMENT WILL BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT TOGETHER WITH COSTS OF THIS ACTION

DATED April 2, 2013

**COHEN & SLAMOWITZ, LLP**

ATTORNEYS FOR PLAINTIFF

**P.O. BOX 9004, 199 CROSSWAYS PARK DR., WOODBURY, NY 11797-9004**

(516) 686-8992 (800) 293-6006 ext. 8992, Refer to C&S File No F009145

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DEFENDANTS TO BE SERVED

SANDRA A BAKER, 9368 HARRIS RD LEE CENTER NY 13363-2208

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR AND IS AN ATTEMPT TO COLLECT A DEBT.  
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**



ID3752080

C&S00081

CITY COURT OF CITY OF SHERRILL  
COUNTY OF ONEIDA, STATE OF NEW YORK

-----X  
TD BANK USA, N A AS SUCCESSOR IN INTEREST  
TO TARGET NATIONAL BANK  
PLAINTIFF

-AGAINST-

SANDRA A BAKER

DEFENDANT(S)

-----X

PLAINTIFF, BY ITS ATTORNEYS COMPLAINING OF THE DEFENDANT(S), RESPECTFULLY  
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THROUGH AN AGENT AND THE INSTANT CAUSE OF ACTION AROSE OUT OF SAID TRANSACTION  
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(HEREINAFTER "ORIGINAL CREDITOR"), OFFERED TO OPEN A CREDIT CARD ACCOUNT, ACCOUNT  
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4 DEFENDANT DEFAULTED BY FAILING TO REPAY THE BALANCE DUE UNDER THE  
ACCOUNT DEMAND FOR PAYMENT WAS MADE BUT DEFENDANT FAILED TO REPAY THE  
BALANCE DUE

THE ORIGINAL CREDITOR SOLD THE ACCOUNT, INCLUDING ALL RIGHT, TITLE AND  
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ASSIGNOR OF THE ACCOUNT

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FILED  
2013 APR 16 PM 2:45  
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INDEX NUMBER  
FILE NO F009145

**COMPLAINT**



**WHEREFORE, PLAINTIFF DEMANDS JUDGMENT AGAINST DEFENDANT(S) IN THE SUM OF \$4,841.00 TOGETHER WITH FEES, COSTS AND DISBURSEMENTS**

**THE UNDERSIGNED ATTORNEY HEREBY CERTIFIES THAT, TO THE BEST OF HIS/HER KNOWLEDGE, INFORMATION AND BELIEF, FORMED AFTER AN INQUIRY REASONABLE UNDER THE CIRCUMSTANCES, THE PRESENTATION OF THE WITHIN COMPLAINT AND THE CONTENTIONS THEREIN ARE NOT FRIVOLOUS AS DEFINED IN PART 130-1.1(c) OF THE RULES OF THE CHIEF ADMINISTRATOR**

**DATED APRIL 2, 2013**

**YOURS, ETC  
COHEN & SLAMOWITZ, LLP**

**BY S/  
D. Cohen/M. Slamowitz/C. Van Houten ESQS  
ATTORNEYS FOR PLAINTIFF  
P.O. BOX 9004, 199 CROSSWAYS PARK DRIVE, WOODBURY,  
NY 11797-9004  
(516) 686-8992, (800) 293-6006 ext 8992,  
Refer to C&S File No F009145**

**STATE OF NEW YORK  
SHERRILL CITY COURT  
373 SHERRILL RD  
SHERRILL NY 13461  
RECEIPT # 2041**

**DATE: 04-16-2013 TIME: 13:54  
CASE #: C-5407-13 S. BAKER  
RECEIVED FROM: COHEN & SLAMOWITZ**

1-CONSUMER CREDIT FEE	95.00
1-FILE SUMMONS/1ST PAPER	45.00
<b>TOTAL DUE:</b>	<b>140.00</b>
<b>PAYMENTS:</b>	
CHECK #978116	140.00
<b>AMOUNT TENDERED:</b>	<b>140.00</b>
<b>CHANGE:</b>	<b>.00</b>
<b>OPERATOR: CAC</b>	<b>REGISTER# 1</b>

**FILED  
2013 APR 16 PM 2:45  
CLERK**

C&S00083

# EXHIBIT B

www.trustedvoice.net  
E-mail: mark@trustedvoice.net

LAW OFFICES  
**MARK F. VIENCEK**  
ATTORNEY AND COUNSELOR AT LAW  
290 LINDEN OAKS • FIRST FLOOR  
ROCHESTER, NEW YORK 14625  
(585) 419-8075  
FAX 1(866) 818-9500

4521 LEWIS ROAD  
WALWORTH, NY 14568

June 6, 2013

Cohen & Slamowitz, LLP  
P.O. Box 9004  
199 Crossways Park Drive  
Woodbury, New York 11797-9004

Re: TD Bank USA, N.A., as Successor in Interest to Target National Bank v. Sandra A. Baker  
Index No.: CV-5407-13

Dear Counselors:

This office represents Sandra A. Baker, the defendant in the above referenced action.  
Enclosed please find defendant's Answer to the Complaint.

Thank you.

Very truly yours,



Mark F. Viencek

MFV/fa

baker, sandra\_01

cc: Sandra A. Baker

C&S00052

CITY COURT OF CITY OF SHERRILL  
COUNTY OF ONEIDA, STATE OF NEW YORK

---

TD BANK USA, N.A., AS SUCCESSOR IN  
INTEREST TO TARGET NATIONAL BANK

Plaintiff,

Against

SANDRA A. BAKER,

Defendant.

---

**ANSWER**

Index No.: C-5407-13

DEFENDANT'S ADDRESS:  
9368 Harris Rd  
Lee Center, NY 13363

Defendant, as and for her Answer to Plaintiff's Complaint, states as follows:

1. DENIES knowledge or information sufficient to form a belief as to the allegations in the first two paragraphs of the Complaint numbered "1" and "2".
2. DENIES knowledge or information sufficient to form a belief as to the allegations in the second and third paragraphs of the Complaint also numbered "1" and "2".
3. DENIES knowledge or information sufficient to form a belief as to the allegations in the remaining paragraphs of the Complaint numbered 3, 4, 5 and 6.
4. DENIES each and every other allegation of the Complaint not specifically admitted, denied, or otherwise controverted.

**FIRST AFFIRMATIVE DEFENSE**

5. Plaintiff lacks standing to sue.

**SECOND AFFIRMATIVE DEFENSE**

6. Plaintiff is not the real party in interest.

**THIRD AFFIRMATIVE DEFENSE**

7. Plaintiff failed to satisfy the requirements of section 213(a) of the Uniform City Court Act.

**FOURTH AFFIRMATIVE DEFENSE**

8. The Court has not jurisdiction of the person of the defendant.

**FIFTH AFFIRMATIVE DEFENSE**

9. Plaintiff's action is barred by the applicable statute of limitations.

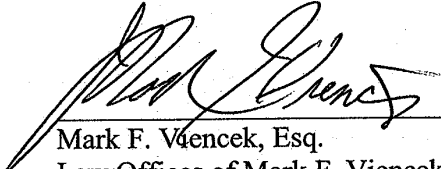
**SIXTH AFFIRMATIVE DEFENSE**

10. The Summons annexed hereto which forms a part hereof was not signed by an attorney in violation of Section 130-1.1A of the Rules of the Chief Administrator of the Courts (22 NYCRR § 130-1.1A).

**SEVENTH AFFIRMATIVE DEFENSE**

11. The Complaint annexed hereto which forms a part hereof was not signed by an attorney in violation of Section 130-1.1A of the Rules of the Chief Administrator of the Courts (22 NYCRR § 130-1.1A).

Dated: June 6, 2013

  
Mark F. Viencek, Esq.  
Law Offices of Mark F. Viencek  
Attorney for Defendant  
290 Linden Oaks, First Floor  
Rochester, New York 14625  
(585) 419-8075

# EXHIBIT C

FILED / RECEIVED  
CITY COURT  
2013 SEP 3 11:11 AM  
**COPY**

DUPLICATE

CITY COURT OF CITY OF SHERRILL  
COUNTY OF ONEIDA, STATE OF NEW YORK

TD BANK USA, N.A., AS  
SUCCESSOR IN INTEREST TO  
TARGET NATIONAL BANK

INDEX NUMBER CS407/13  
FILE NO. F009145

PLAINTIFF,

-AGAINST-

SANDRA A BAKER

DEFENDANT(S).

**SETTLEMENT AGREEMENT AND STIPULATION**

**THIS AGREEMENT** is made on August 28, 2013, by and between TD BANK USA, N.A., AS SUCCESSOR IN INTEREST TO TARGET NATIONAL BANK (hereinafter the "Plaintiff"), and Sandra A Baker (hereinafter the "Defendant"), by and through their respective counsel.

1. Defendant will pay to Plaintiff in full settlement of account number ending in 3609 (the "Account") the sum of \$800.00 as follows:

PAYMENT NUMBER	PAYMENT DATE	PAYMENT AMOUNT
1.	09/06/2013	\$800.00

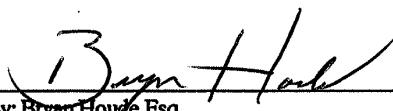
2. All payments shall be made payable to the order of TD BANK USA, N.A. Defendant may forward payments to Cohen & Slamowitz, LLP, 199 Crossways Park Drive, Woodbury, NY 11797-9001, or Defendant may pay online at [www.cslawllp.com](http://www.cslawllp.com). All payments are subject to collection.
3. In the event that the Defendant shall default in making any of the payments required hereunder, then Plaintiff will mail written notice of the default to the Defendant's attorney, Mark F. Viencek, at the Law Offices of Mark F. Viencek, 290 Linden Oaks, First Floor, Rochester, NY 14625, and will also fax said notice to Mr. Viencek to the following fax number: 1-866-818-9500. If the default remains uncured for ten (10) days from the mailing of the notice, then the entire amount claimed in the summons and complaint, less a credit against same for any payments made hereunder, shall immediately be due and payable without further notice and demand. In such an event, Plaintiff may request that the court enter judgment for the amount prayed for in the summons and complaint, less a credit against same for any payments made hereunder. The request for judgment may include principal, interest, applicable costs, and disbursements as permitted by law.
4. Upon receipt by Plaintiff's counsel and clearance of all sums required hereunder, Defendant shall be released from all liability in connection with the Account, and Plaintiff's counsel will provide to Defendant's attorney a letter confirming the Account is settled.
5. A facsimile signature shall be deemed an original for all purposes including the filing of this stipulation with the court.
6. Upon clearance of the settlement funds, the attorneys for both parties shall execute a Stipulation of Discontinuance with Prejudice which will be filed with the Court by Defendant's Attorney.

In witness whereof, the parties, by and through their respective Counsel, hereto have set forth their hands and seals on the date herein above written.

FILED / RECEIVED  
CLERK OF DISTRICT COURT  
2013 SEP 10 AM 10:36  
**COPY**

X 

**Mark F Viencek**  
Attorney for Defendant (Signature Above)



By: Bryan Houde Esq.  
Cohen & Slomowitz, LLP  
Attorneys for Plaintiff

File No. F009145

Page 2 of 2